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CLERK

In the Supreme Court of the United States

No. 21

OCTOBER TERM, 1946.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE No. 926, *et al.*,

Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, a corporation,

FARMERS GRAIN COMPANY, a corporation, *et al.*,

Respondents.

REPLY TO ANSWER OF RESPONDENT RAILROAD TO MOTION OF PETITIONERS FOR ORDER AUTHORIZING ABBREVIATION OF PRINTED RECORD.

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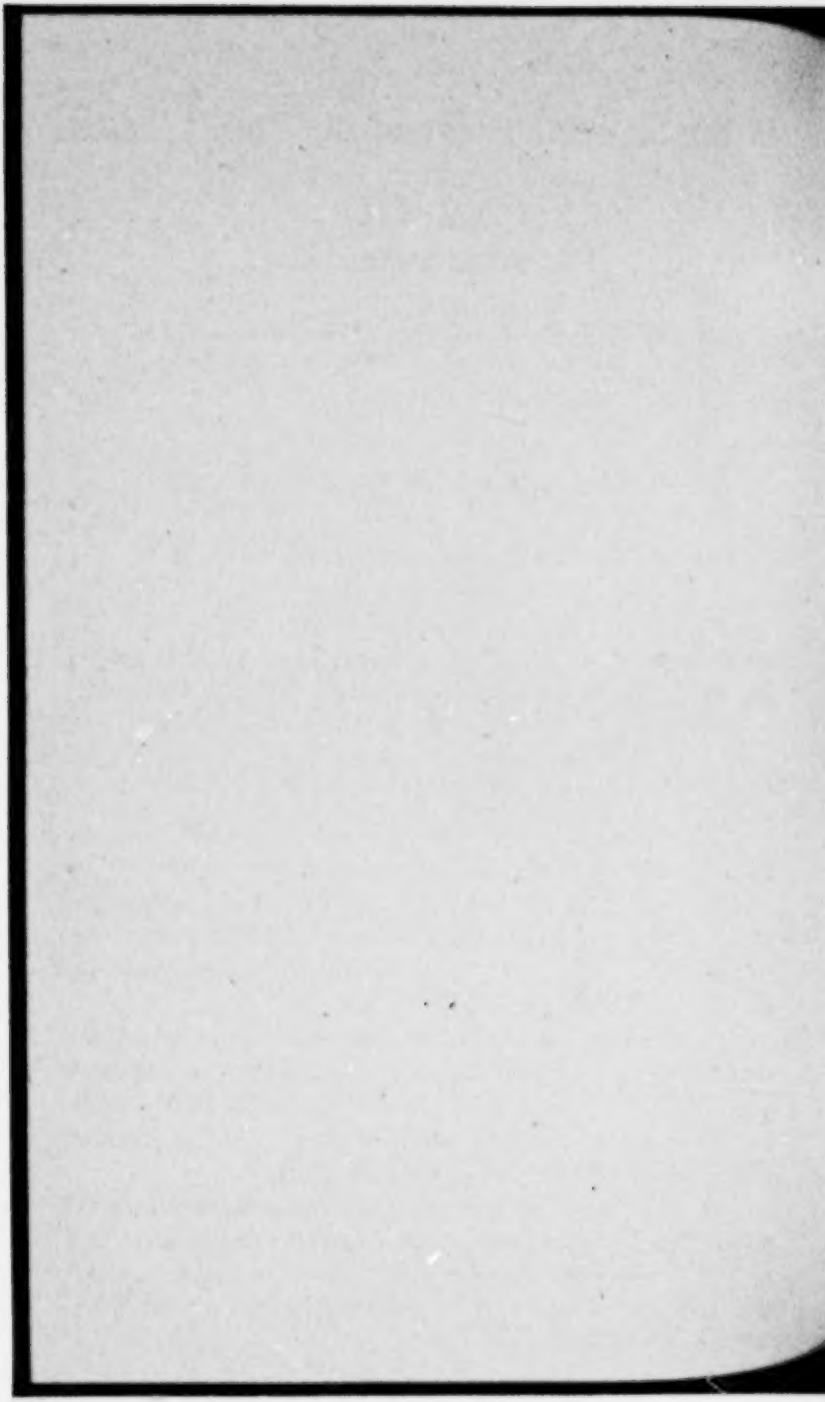

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In the Supreme Court of the United States

No. 908.

OCTOBER TERM, 1946.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE No. 926, *et al.*,

Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, a corporation,

FARMERS GRAIN COMPANY, a corporation, *et al.*,

Respondents.

REPLY TO ANSWER OF RESPONDENT RAILROAD TO MOTION OF PETITIONERS FOR ORDER AUTHORIZING ABBREVIATION OF PRINTED RECORD.

May It Please The Court:

The respondent railroad opposes petitioners' motion for an order by this Court authorizing abbreviation of the printed record, on two grounds. The first is that no reasonable or adequate effort has been made by petitioners' counsel to arrive at a stipulation with counsel for respondents, as required by Rule 38 of this Court.

A recital of the efforts by petitioners' counsel in this respect seems justified, and such is accordingly hereinafter presented in the form of an affidavit by Mr. Louis F. Knoblock, one of the attorneys for petitioners. The original of this affidavit has been filed with the Clerk.

By this affidavit the Court is informed that petitioners' counsel endeavored throughout a period of more than two months (November and December, 1946) to induce counsel for the respondents to agree upon a stipulation to abbrevi-

ate the record. Counsel for the respondent shippers were adamant in their refusal to agree to anything approaching the concept of the petitioners' counsel regarding the contents of record for a presentation of the questions to be incorporated in the petition for a writ of certiorari. The effect of this attitude of counsel for the respondent shippers was to virtually foreclose petitioners' counsel from securing the desired stipulation, however compatible might be the views of railroad's counsel in this respect.

As set forth in the attached affidavit, the railroad's present counsel has only lately entered his appearance in the case, and his representations as to the extent and character of the petitioners' negotiations with railroad counsel in an effort to agree on a stipulation are, we believe, adequately answered by Mr. Knoblock's affidavit.

With respect to the railroad's second point, that the Circuit Court of Appeals did in fact alter the District Court's findings in one or more respects, our assertion to the contrary in the Motion For Order Authorizing Abbreviation of Printed Record was made upon the assumption that it would be read in the light of the questions which the petitioners desire to bring before this Court by certiorari. The Circuit Court of Appeals made no findings contrary to those made by the District Court which could reasonably be considered relevant to the questions set forth in the petition for a writ of certiorari.

The respondent railroad objects, also, to the record suggested by the petitioners' motion on the ground that it includes motions and orders in the District Court pursuant to the mandate issued on November 27, 1946. We point out in response that one of railroad's former counsel, in a Designation of Record dated December 20, 1946, filed in the Circuit Court of Appeals, requested the incorporation of these documents in the record on the petition for a writ of certiorari. Petitioners' counsel acquiesce in the designation, not with the thought that this Court would as-

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sume, in the event certiorari is granted, to review the orders of the District Court issued pursuant to the mandate, but because these motions and orders are the best source of information currently available to demonstrate the character and effect of the mandate from which the petition stems.

"AFFIDAVIT BY LOUIS F. KNOBLOCK.

STATE OF ILLINOIS, } ss.
COUNTY OF PEORIA, }

LOUIS F. KNOBLOCK, being first duly sworn on his oath according to law, deposes and states as follows:

My name is Louis F. Knoblock, and I am one of the attorneys representing the Petitioners in the above entitled cause.

In reply to representation made on page 7 of Respondent Railroad's Answer to Motion for Order Authorizing Abbreviation of Printed Record, where it is stated that no reasonable effort to secure a stipulation as to the omissions from the record to be printed has been made by the Petitioners, it is hereby stated by this affiant that counsel for the Respondent Railroad is plainly unacquainted with the facts and circumstances of this case, and it must be borne in mind that the attorney now representing Respondent Railroad is comparatively a newcomer in this case and very obviously does not know the facts and circumstances that existed prior to the entry of his appearance in this cause. It is hereby stated that as early as October, 1946, after this affiant had a conference with members of the office of the Clerk of the Supreme Court of the United States regarding this record, this affiant at that time immediately began negotiations to secure this stipulation for an abbreviation of the record, a member of the office of the Clerk of the Supreme Court of the United States having ad-

vised this affiant that all efforts should be made to secure such stipulation. That immediately upon this affiant's return to the City of Peoria, Illinois, this affiant contacted attorney Clarence W. Heyl of the City of Peoria, Illinois, who was then and there counsel for this Respondent Railroad. Numerous conferences were had between this affiant and attorney Heyl regarding an agreement for a stipulation to abbreviate this record, but representations were made to this affiant by said attorney Heyl that such a stipulation could not be obtained from his client and that no such agreement could be entered into. This position was maintained by counsel for said Respondent Railroad during the months of October and November, and practically all of the month of December, 1946. On or about December 27, 1946, the president of the Respondent Railroad discharged attorney Clarence W. Heyl from further employment in this case and Attorney Donald A. Morgan for the first time thereafter became identified with this litigation as far as this affiant is concerned.

Affiant further states that prior to the said Donald A. Morgan's appearance in this case, this affiant had for months previous thereto made strenuous and sincere efforts to secure this stipulation, but received no cooperation and no encouragement whatsoever from legal representatives of said Respondent Railroad. Furthermore, this affiant negotiated with attorney John F. Sloan, Jr., one of the attorneys representing the Respondent Shippers in this case, regarding such a stipulation and received a positive refusal to agree to any kind of stipulation unless a great portion of the testimony regarding the case of the Respondent Shippers against the Respondent Railroad were included in the printed record, which, in the opinion of this affiant and other counsel for the Peti-

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tioners, was wholly immaterial and irrelevant to the issues now presented to this Court. And it is further hereby stated that what counsel for the Respondent Shippers insisted be placed in the printed record, and what counsel for the Respondent Railroad insisted had to be made a part of the printed record, made it impossible to secure any kind of a stipulation toward an abbreviation of this record.

It is further stated that attorney Donald A. Morgan, now representing Respondent Railroad, being a newcomer in this case, apparently is not advised of all the effort that was expended over several months by this affiant in attempting to work out some kind of an agreement. The statement on page 3 of Respondent Railroad's Answer to Motion that this affiant represented that the stipulation as presented by this affiant to said attorney Morgan had to be agreed to precisely, without deletions or additions, is wholly untrue and without foundation. This affiant represented in fact that any deletions or additions that Respondent Railroad desired would be presented by this affiant to his associate counsel, but that such additions or changes would have to be made very promptly, for the reason that the time was rapidly expiring to present his Petition for Writ of Certiorari to this Honorable Court, and further, this affiant had very little hope or expectation of accomplishing anything in this regard as far as the Respondent Railroad was concerned, in view of the attitude that had been manifested by the Respondent Railroad for the past several months during the previous extensive negotiations.

This affiant further states that representations made on page 4 of Respondent Railroad's Answer to Motion, that negotiations between this affiant and attorney Morgan on January 7 and 8, 1947, were in the nature of an ultimatum for the acceptance or refusal

of the proposed stipulation is wholly untrue, and that said attorney Morgan, being such a newcomer in the case, at that time apparently had no knowledge of the extensive efforts that had been exerted prior to his appearance in said cause.

This affidavit is made for the purpose of presenting the facts and circumstances to this Honorable Court in support of the Motion now pending.

LOUIS F. KNOBLOCK.

Subscribed and sworn to before
me this 8th day of February,
1947.

EVA BUCHER,
Notary Public."

We believe it apparent from the foregoing that a substantial and good faith effort was made by petitioners' counsel to arrive at a stipulation for abbreviation of the record with counsel for the respondents; that this effort was without success; and that a large and needless expense will be incurred in the printing of the record unless this Court, by its order, authorizes abbreviation of the record by sustaining the petitioners' motion.

LOUIS F. KNOBLOCK,
HAROLD C. HEISS,
RUSSELL B. DAY,
Attorneys for Petitioners.

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